JOHORE REPORT.

KUAN LEONG HIN vs. THE STATE OF JOHORE.

[Original Civil Jurisdiction (Manning, J.) Aug. 31, 1941]

Contract—Enjoyment of benefit of work of another—liability to pay for work quasi ex contractu—F.M.S. Contract Enactment, Section 70.

The liability imposed by Section 70 of the F.M.S. Contract Enactment to pay for work done upon enjoying the benefit of the work is not confined to cases where the work has been performed in circumstances of emergency or for the purpose of salvage. Once there has been enjoyment of a benefit which was not intended to be conferred gratuitously, there can be no avoidance of the liability to pay, and the absence of any means of escape from the enjoyment of such a benefit affords no ground for relief from such liability.

The plaintiff sought to recover payment for work done in clearing a certain stretch of a tributary to the Muar river. He had cleared adjoining stretches in fulfilment of "works orders" given to him by the Public Works Department and had been paid for the work done under those orders. He alleged that the additional stretch had been cleared in pursuance of a subsequent verbal arrangement, while the Defendants relied on the absence of any contract by which they could be bound. On a finding that the additional stretch had in fact been cleared by the plaintiff in expectation of reward and that the Defendants had thereby derived a benefit which they had no option but to enjoy, it was held, for the reasons given in the part of the judgment set out below, that the plaintiff was entitled to recover payment by virtue of the provisions of Section 70 of the F.M.S. Contract Enactment, which embodies the law relating to contracts in the State of Johore.

Cases referred to:—

(1) *Damodara Mudaliar vs. Secretary of State for India* (1894) 18 Madras 88.

(2) *Secretary of Estate for India vs. G. T. Sarin & Co.* A.I.R. 1930 Lahore 364.

TRIAL OF ACTION.

Mitra for Plaintiff.

Ismail (D.P.P.) for Defendants.

Manning, J.—[After reviewing the facts and finding that the plaintiff did substantially according to specification, clear the river from C to E in the same manner as he had cleared the other portions for which he had works orders, continued as follows]:—

These findings of fact being established it is necessary to consider Section 70 of the Contract Enactment. This is as follows:—

"70.—Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

The finding that the plaintiff got an order from Morton to do the work and that he relied on Morton's promise to procure a properly signed order shows that what the plaintiff did was done lawfully and that he did not intend to do it gratuitously. The other words as to which I have to be satisfied are "such other person enjoys the benefit thereof". Mr. Ismail, for the Government, did not, either in his opening or closing address, make any reference to this aspect of the plaintiff's case; but Mr. Mitra, for the plaintiff, cited two authorities, viz. *Damodara Mudaliar and another v. Secretary of State for India*[1] and *Secretary of State and another v. G. T. Sarin and Co.*[2]. The facts in the *Damodara* case were that eleven villages were irrigated by a certain tank. Originally all these villages were zemindari villages. Seven of them became severed from the zemindari and became raiyatwari villages—As regards these latter seven the duty to maintain the tank devolved on the Government. The Government repaired the tank and succeeded in recovering from the four zemindari villages a proportionate part of the cost, it being found that the Government had acted lawfully and had not intended to act gratuitously and that the four zemindari villages had enjoyed the benefit of the work done. In the course of its judgment the Court stated "According to the section it is not essential that the act shall have been necessary in the sense that it has been done under circumstances of pressing emergency, or even that it shall have been an act necessary to be done at some time for the preservation of property. It may therefore be extended to cases into which no question of salvage enters". The case is useful as it decides that a benefit, conferred upon a person independently of his own volition and which he cannot refuse the enjoyment of once it is conferred, must be paid for. The repair of the tank benefited the zemindari villages; once it was done, there was no avenue of escape from the admission that they were enjoying the benefit. Similarly in the present case, if the clearing of the river conferred a benefit on the Government, the Government had no option but to enjoy that benefit; they could not restore the river to its previous dirty condition.

The facts in the *Sarin* case, put briefly, were that a Major Somerville, an officer commanding a military depot, entered into a contract with G. T. Sarin and Co. for the supply of grain for the horses of the depot. The grain was supplied; some of it was paid for; but as regards the rest the Secretary of State refused to pay. Sarin and Co. sued the Secretary of State and an officer commanding a cavalry regiment and succeeded in getting a decree against both defendants. On appeal it was held that the act of Major Somerville in entering into the contract on behalf of the Secretary of State was *ultra vires* and that there was no valid contract between Sarin and Co. and the Secretary of State. But it was held that under Section 70 of the Contract Act the Secretary of State was bound to make compensation to Sarin and Co. for the grain supplied. Tek Chand, J., said "I am of opinion that Section 70, Contract Act, must be interpreted according to its clear and explicit terms and not in reference to the provisions of the English Law relating to this matter." This case is in point because though the Government was held not to be bound by an agreement entered into on its behalf by an unauthorised person, yet it was compelled to pay as the facts fell within the terms of Section 70 of the Contract Act.

In the present case one's common sense compels one to infer that the Government enjoyed the benefit of the work done by the plaintiff from C to E. They say the object of clearing the river was to prevent flooding in the area above A. Here there is a river admittedly in a very dirty condition from A to D, i.e. from the bridge to the mouth, a distance of 3.85 miles. They clear 1½ miles from the bridge downstream, and one mile from the mouth upstream, leaving a very dirty piece of river, 1.35 miles in length, in between. I should require some expert evidence before I was satisfied that this was a proper way of doing the work they had set out to do. If work had been done from A to C and stopped there, one might understand that the Government considered this adequate to prevent flooding above A; but the fact that they also cleared from D to E convinces me that they did not consider it adequate—they felt that the whole stretch should be cleared. I am convinced that Morton knew this and that is why he gave the order, and he fully expected his Department would recognise it and pay for the work when the distance was measured. I believe the plaintiff when he says that Morton told him that the Department had no money at present and that he would pay the plaintiff when he received the additional vote from Johore Bahru. I find that the Government enjoyed the benefit of the work done by the plaintiff from C to E.

The plaintiff succeeds under Section 70 of the Contract Enactment. I do not accept his evidence as to the distance from C to E. He made it 180 chains. As I have already indicated I accept the evidence of Mr. Simcock as to the length of the river from A to D—he is an expert in these matters and worked it out in such a way that there is only a very slight margin of error. He made the distance from A to D 3.85 miles. This means that C to E is 1.35 miles, i.e. 108 chains. Plaintiff is entitled to be compensated at the same rate as he was paid for the written orders, i.e. $7 a chain. There will be judgment in his favour for $756 and costs.

Order Accordingly.